

CASCADE COUNTY ZONING BOARD OF ADJUSTMENT

Meeting Minutes
Thursday March 28, 2019
9:00 AM
Room #105, Courthouse Annex
Cascade County Commissioners Chambers

Board Members: Bill Austin, Charles Kuether, Leonard Reed, Rob Skawinski, Michele Levine

Notice: Pursuant to MCA 2-3-212(1), the official record of the minutes of the meeting is in audio form, located at cascadecountymt.gov and the Clerk and Records Office. This is a written record of this meeting to reflect all the proceedings of the Board. MCA 7-4-2611 (2) (b). Timestamps are indicated in red, within each agenda item below, and will direct you to the precise location should you wish to review the audio segment.

These minutes are paraphrased and reflect the proceedings of the Zoning Board of Adjustment. These minutes are considered a draft until the Zoning Board of Adjustment approves them.

STAFF ATTENDEES: Anna Ehnes, Sandor Hopkins, and Destiny Gough

PUBLIC ATTENDEES: Kevin May, Burke L. Tyree, and Ken Weinheimer

1. CALL TO ORDER: CHAIRMAN BILL AUSTIN CALLED THE MEETING TO ORDER AT 9:02 AM

2. ROLL CALL

BOARD MEMBERS PRESENT: Bill Austin, Leonard Reed, Michele Levine, Charles Kuether, and Rob Skawinski

BOARD MEMBERS ABSENT: None

3. APPROVAL OF MINUTES: FEBRUARY 14, 2019

Charles Kuether motion to approve
Michele Levine seconded the motion
All in favor; motion carries 5-0

4. OLD BUSINESS: NONE

5. NEW BUSINESS:

A. Dimensional Variance for Aspen Air, LLC – Ken Weinheimer

1. Staff Report by Sandor Hopkins

Motions:

A. **Alternative 1:** The variance to allow for a reduced rear yard setback to ten (10) feet for a storage facility on the parcel described as Block 1, Lot1 A of Henke Tracts Minor Subdivision **be denied**.

OR

B. **Alternative 2:** The variance to allow for a reduced rear setback to ten (10) feet for a storage facility on the parcel described as Block 1, Lot1 A of Henke Tracts Minor Subdivision **be approved**.

2. Board Discussion & Action

Board Discussion

Bill Austin (00:09:05) asks the board members if they have any questions.

Charles Kuether (00:09:09) asks if the applicant is here and if the applicant could come to the front to answer a few questions.

Ken Weinheimer owner of Aspen Air, LLC at 4601 River Dr. N Great Falls, MT. 59405 (00:9:29) introduces himself.

Charles Kuether (00:09:48) asks the applicant why he does not abandon Lot 1A and create a bigger lot, which may result in reduced taxes and avoid the need for a variance.

Kevin May of Big Sky Civil & Environmental at 1324 13 Ave. SW Great Falls, MT. 59404 (00:10:22) explains that if they were to aggregate those parcels together they still would need to go through DEQ review. DEQ review on a commercial property on the hypothesized conjoined parcels would ignore any previous approval. On top of this, the stormwater improvements would far exceed the cost of the tax differences and the stormwater pond would be half of the lot size.

Leonard Reed (00:11:24) asks the applicants to point on the map where the subject property is located.

Kevin May (00:12:46) explains the subject maps.

Public Hearing opened 9:14 am

Bill Austin asked for proponents: none

Bill Austin called for opponents: none

Public Hearing closed at 9:18 am

Board Discussion and Decision

Rob Skawinski (00:12:55) moves the board to motion to **approve** the variance to allow for a reduced rear setback to ten (10) feet for a storage facility on the parcel described as Block 1, Lot1 A of Henke Tracts Minor Subdivision.

Charles Kuether seconds the motion for approval

All in favor, motion carries 5-0

B. SUP 002-2019, Outfitter/Guide Facility – Burke Tyree

1. Staff Report by Anna Ehnes

Motions:

- A. Alternative 1:** Move for the Special Use Permit to allow an Outfitter/Guide Facility on Parcel 0003150000, Geocode 02-2555-15-2-02-04-0000 **be denied.**

OR

- B. Alternative 2:** Move the Board to adopt the staff report and **approve** the Special Use Permit for an Outfitter/Guide Facility on Parcel 0003150000, Geocode 02-2555-15-2-02-04-0000 subject to the following conditions:

1. The applicant obtains approval from the City-County Health Department for the change of use. This includes any necessary steps taken to be sure the septic system sized for three (3) bedrooms is sufficient to hold the six (6) to ten (10) tourists expected at one time.
2. Applicant rewrite Certificate of Subdivision Approval (COSA) to obtain compliance with Department of Environmental Quality.
3. The facility must contract with an outfitter and provide a copy of the contract to Cascade County Planning for the file. Any changes with the outfitter must also be given to the Planning Division.
4. Reasonable access must be provided to the area and maintained for all emergency services including ambulance, fire, and police vehicles.
5. The applicant obtains an Approach Permit from the Montana department of transportation.
6. A permit must be obtained for any sign that is placed on the premise, to ensure it meets the requirements of Cascade County Zoning Regulations. A phrase that the facility is “private” or “not open to general public” must be included on the sign or at the property entrance.
7. The applicant obtains any other county, state, or federal permits required by the respective agency for the legal operation of the proposed use.
8. The applicant adheres to all relevant building code requirements established by the Department of Labor and Industry.

2. Board Discussion & Action

Board Discussion

Charles Kuether (00:36:31) asks what the difference is between the outfitting facility and an Airbnb.

Anna Ehnes (00:36:58) explains that guests staying at this outdoor guide facility must be using the assigned and contracted outfitter from Tyree's outdoor guide facility in order to reside in Tyree's facility. This factor is dissimilar to an Airbnb where a guest is not required to have an outfitter in order to stay at one of their facilities. City-County Health Department and the Planning staff do find it similar to an Airbnb. The health department will be having a Costa rewrite with a condition of subdivision approval through DEQ, as the facility is more of a commercial use. This rewrite will service the facility's distinction from an Airbnb.

Bill Austin (00:37:47) asks if this facility is indeed a commercial operation.

Anna Ehnes (00:37:49) answers yes.

Sandor Hopkins (00:37:51) notes that outfitters are also licensed through the state of Montana.

Charles Kuether (00:37:57) notes that the use for the facility is identical to an Airbnb.

Anna Ehnes (00:38:17) answers yes. The only difference is that guests have to be using that contracted outfitter as a part of the outdoor guide facility.

Michele Levine (00:38:24) asks if this Special Use Permit for an Outfitter/Guide Facility was the incentive to add outfitters to the Zoning Regulations.

Anna Ehnes (00:38:30) says that she believes so. She also notes that the zoning regulations do have tourist cabins listed. If they were to list it as a tourist cabin, they will still need to get the place permitted.

Charles Kuether (00:38:43) asks what the benefits are being a homeowner or an outfitter.

Burke L. Tyree at 2819 8th Ave. S. Great Falls, MT 59405 (00:38:57) says that he interprets the codes to say that a person who stays at an Airbnb or a tourist home and plans to go fishing are in violation of the codes. He says that the dwelling must be a certified outfitter lodge. He also says that an Airbnb and a tourist home do have some restrictions. His business will be a certified outfitter and will allow guests to go fishing on their own.

Anna Ehnes (00:40:23) notes another reason it might be required is due to the state requiring licensed state outfitters to ensure that all fishers have a valid state fishing license in order to fish.

Michele Levine (00:40:38) asks Burke Tyree if there were any changes that had to be made to the subdivision, covenants or etc. as there are occasionally restrictions on commercial use.

Burke L. Tyree (00:40:53) says that they are in the middle of a rewrite right now for the covenants; everything else is as it was.

Charles Kuether (00:41:10) asks why there is a reference to three (3) bedrooms in the listing but the listing for the house for sale list five (5) bedrooms.

Anna Ehnes (00:41:28) explains how it is related to the septic system. The septic system permitting process is being rewritten to make sure that the septic system can hold the amount of people that will be in a dwelling.

Charles Kuether (00:42:10) asks if it would be more appropriate to have a septic system suited for five (5) bedrooms.

Anna Ehnes (00:42:15) says that they are going through the process of a rewrite, in order to get the analysis done to ensure that the septic system is appropriate.

Burke L. Tyree (00:42:20) notes that it is how it is qualified legally as what is and is not a bedroom. He says that the use for a bedroom can also be nonconforming or conforming, but still be classified as a bedroom legally. For instance, if a bedroom is a rental and it is nonconforming and cannot be counted as a bedroom. He goes on to say that he plans to have a three (3) bedroom dwelling with around six (6) renters for the dwelling.

Charles Kuether (00:43:19) says it states on the proposed listing that it is for six (6) to ten (10) people for the dwelling. He wonders if it is going to say ten (10) tourists, the listing should say five (5) bedrooms or only list six (6) tourists per dwelling.

Burke L. Tyree (00:43:30) says at the end of the day, it depends on what the septic people state what can be done and permitted. If the future allows growth to ten (10) tourists that is great. Overall, they would like to stick with six (6) just to begin.

Charles Kuether (00:44:02) asks if this proposed approval should be modified to say three (3) to five (5) bedrooms with six (6) to ten (10) people depending on what the DEQ approves.

Anna Ehnes (00:44:20) says yes however the problem lies with what the City-County Health Department counts as a bedroom and what a realtor counts as a bedroom listing.

Michele Levine (00:44:37) asks if they need to have the number of bedrooms and the number of guests in the conditions of approval. She wonders if it would better to be vaguer in the conditions of approval, and to state that the septic system is appropriately sized for the use. She would rather leave the quantity of tourists and bedrooms to the health professionals to decide.

Anna Ehnes (00:44:49) agrees and says dropping the quantity of tourists would not be an issue for the City-County Health Department. The department does not size the septic systems in regard to the amount of people. They do however do so with bedrooms.

The Zoning Board of Adjustment members agree that the conditions of approval must be changed.

Charles Kuether (00:46:22) asks about Goal 2, point C on page nine (9) of the staff report where it discusses about three (3) lots that will have covenants that promote proper design and open space. He would like to know where the applicant is with those lots.

Burke L. Tyree (00:46:46) says that the lots are owned by the owners of the property. There is no current plan for those lots to be sold or developed. He assumes that the lots are a part of this proposal, as the lots aide in the ambiance of an outfitter and provide further activities for guests. He points to the map. Then, he mentions that there are some natural fishing access points and some open land on these lots. Guests will be free to fish and walk around on these lots.

Michele Levine (00:47:50) ask Anna Ehnes if the lots are a part of the geocode... and if they need to be addressed.

Anna Ehnes (00:48:00) says that the lots do indeed have one shared geocode and parcel number. They have been addressed. She says that the Planning staff saw if there were different cabins on the different lots; there would need to be different Special Use Permits for each individual lot. The applicant has no plans to develop those three lots, which they own. In fact, the applicant owns the whole Rainbow Run subdivision.

Charles Kuether (00:48:29) asks if we want the conditions of approval to state something about the lots not being developed.

The Zoning Board of Adjustment members agree that the conditions of approval must be changed.

Public Hearing opened 9:52 am

Bill Austin asked for proponents: none

Bill Austin called for opponents: none

Public Hearing closed at 9:53 am

Board Discussion and Decision

Charles Kuether (00:50:42) Move for the Board to adopt the staff report and findings of fact, and **approve** the Special Use Permit for an Outfitter/Guide Facility on Parcel 0003150000, Geocode 02-2555-15-2-02-04-0000 subject to the following conditions:

1. The applicant obtains approval from the City-County Health Department for the change of use. This includes any necessary steps taken to ensure the septic system is properly sized for the proposed use.¹
2. Applicant rewrite Certificate of Subdivision Approval (COSA) to obtain compliance with Department of Environmental Quality.
3. The facility must contract with an outfitter and provide a copy of the contract to Cascade County Planning for the file. Any changes with the outfitter must also be given to the Planning Division.
4. Reasonable access must be provided to the area and maintained for all emergency services including ambulance, fire, and police vehicles.
5. The applicant obtains an Approach Permit from the Montana Department of Transportation.
6. A permit must be obtained for any sign that is placed on the premise, to ensure it meets the requirements of Cascade County Zoning Regulations. A phrase that the facility is "private" or "not open to general public" must be included on the sign or at the property entrance.

¹ Note: Condition 1 for the approved Special Use Permit was altered by the Zoning Board of Adjustment members. The alterations are reflected above.

7. The applicant obtains any other county, state, or federal permits required by the respective agency for the legal operation of the proposed use.
8. The applicant adheres to all relevant building code requirements established by the Department of Labor and Industry.

Michele Levine seconds the motion for approval

All in favor, motion carries 5-0

6. PUBLIC COMMENTS REGARDING MATTERS WITHIN THE ZONING BOARD OF ADJUSTMENTS'S JURISDICTION: NONE

7. BOARD MATTERS:

Michele Levine (00:56:53) notions that the board should add for future reference on behalf of Charles Kuether the words, "and adopt staff findings of fact..." to both of the Motion's alternatives. Sticking with the verbiage in both of the Motion's alternatives, shows that we are not only adopting a staff report but we are also adopting staff's findings. Likewise, if we have to delineate the reasons why an application is being deemed, then we also need to state that we are adopting a staff report as the legal reasons of why an application is being approved. Therefore, it is not based off of assumption and we are covering all of our bases.

Charles Kuether (00:57:46) agrees but finds that for most situations it is not an issue. If they do change the verbiage, then it is one less thing to stress over in the future.

The Zoning Board of Adjustment members agree that the motions alternatives should be changed.

Bill Austin (00:58:24) asks if there is any other business to attend to.

Sandor Hopkins (00:58:28) says that the Planning staff has received three (3) Special Use Permits for second dwelling townhouses from the same developer, Tim Wilkinson. The staff plans to find some time saving options for the future meeting, since they are adjacent lots with identical uses.

Michele Levine (00:59:02) asks if there is any way that the Planning staff could cut down on reading the staff report.

Bill Austin (00:59:07) says no. He says that they tried in the past to get a motion to cut down in the staff report, however the idea was shot down.

8. ADJOURNMENT:

Leonard Reed made a motion to adjourn

Michele Levine seconded the motion

All in favor, meeting adjourned at 10:02 am